SHARON F. RUBALCAVA (State Bar No. 067363)
PETER A. NYQUIST (State Bar No. 180953)
ERIN L. CURRAN (State Bar No. 209055)
WESTON BENSHOOF ROCHEFORT RUBALCAVA MacCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071
Telephone: (213) 576-1000
Facsimile: (213) 576-1100

Attorneys for Petitioner
THE BOEING COMPANY

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition for Review by The Boeing Company of Waste Discharge Requirements Order Nos. R4-2004-0111 and R4-2006-0008	No. THE BOEING COMPANY'S REQUEST FOR STAY OF WASTE DISCHARGE REQUIREMENTS ORDER NOS. R4-2004-011 AND R4-2006-0008 [NPDES NO. CA0001309]

I. INTRODUCTION

On January 19, 2006, the Los Angeles Regional Water Quality Control Board ("Regional Board") adopted Waste Discharge Requirements Order No. R4-2006-0008 ("2006 Permit"), amending Waste Discharge Requirements Order No. R4-2004-0111 ("2004 Permit").[1] These permits [National Pollutant Discharge Elimination System ("NPDES") Permit No. CA0001309] regulate the limited discharge of industrial waste water and discharges of storm water at The Boeing Company's ("Boeing" or "Petitioner") Santa Susana Field Laboratory facility

[1] Boeing filed a Petition for Review of the 2004 Permit on August 2, 2004. At Boeing's request, that petition has been held in abeyance while Boeing determined whether permit limits could be met. Boeing will accompany this Request for Stay by filing a Petition for Review, on or before February 21, 2006. Wat. Code § 13320; Title 23, Cal. Code Regs., §§ 2050-2068. Additionally, Boeing hereby requests that its Petition for Review of the 2004 Permit be taken out of abeyance for consideration by the State Board on a consolidated appeal with the present issues. Petitioner is aware that a Request for Stay and Petition for Review typically are filed concurrently with the State Board. Nonetheless, we submit this Request for Stay prior to the 30-day deadline in order to facilitate expedited review by the State Board.

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

("SSFL"). While the 2004 Permit imposed numeric effluent limits on all surface water discharges – including storm water discharges – the 2006 Permit limits are more sweeping and significantly more stringent. To Boeing's knowledge, such stringent numeric limits have rarely, if ever, been applied to storm water discharges in the State of California.

Equally important, the Regional Board rejected staff's recommendation to provide Boeing with interim limits and a schedule to achieve compliance with the 2006 Permit by refusing to adopt Cease and Desist Order No. R4-2006-0YYY ("CDO"). In doing so, the Regional Board ignored unrebutted testimony by staff and Boeing that immediate compliance with new permit limits was impossible. As a result, effective March 9, 2006, Boeing is required to achieve immediate compliance with strict numeric limits, on a "never-to-be-exceeded" basis, for all site-wide surface water discharges. This includes all storm water discharges, regardless of magnitude or duration of storm events. Voluminous data from SSFL unequivocally demonstrates the infeasibility of such immediate compliance. Consequently, the Regional Board has placed Boeing in an untenable position where, despite circumstances beyond its control, failure to comply is inevitable.

This matter involves extraordinary factual circumstances and substantial questions of fact and law, and presents at least three compelling reasons for issuance of a stay. First, SSFL consists of over 2800 acres of largely undeveloped, mountainous terrain. Surface water discharges from the facility consist almost entirely of storm water discharges. In fact, discharges from Outfalls 003 through 010 are exclusively storm water. In both the 2004 and 2006 Permits, the Regional Board has improperly established stringent numeric limits to storm water discharges, based on the California Toxics Rule ("CTR"). The CTR does not apply to storm water discharges. Further, it is neither possible for Boeing to eliminate storm water discharges, nor technologically feasible to collect and treat all surface water during storm events at SSFL in order to achieve immediate compliance. Thus, exceedances of existing permit requirements are inevitable and unavoidable.

Second, in September 2005, the Topanga Fire dramatically changed conditions at SSFL. Fires burned through approximately 70% of the site and largely devastated the vegetative cover that normally stabilizes slope soils, leaving behind substantial ash deposits and denuded hillsides. The Topanga Fire was an unanticipated natural event, entirely beyond Boeing's control.

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

Preliminary post-fire data from SSFL, which Boeing submitted to the Regional Board, demonstrate increased concentrations in storm water runoff of various regulated constituents above permit limits. Yet, in adopting the 2006 Permit, the Regional Board did not consider the effects of the Topanga fire on either storm water quality or Boeing's ability to comply with permit requirements.

Third, Boeing is presently engaged in limited "hot fire" rocket engine testing at SSFL in support of the Delta Rocket Engine program, on behalf of the National Aeronautics and Space Administration ("NASA"), the United States Air Force ("USAF") and the National Reconnaissance Office ("NRO"). Pending additional testing and development of engine repairs necessary to clear them for flight, the current inventory of Delta Rocket engines is grounded. Unless a stay is issued, Boeing must cease engine testing prior to the effective date of the 2006 Permit in order to prevent surface water discharges from the Alfa Test Stand (Outfall 012) that could result in permit violations. SSFL is currently the only location, anywhere in the world, with necessary infrastructure for these tests to occur. Therefore, if Boeing is unable to conduct further tests necessary to complete repairs, the Delta Rockets could remain grounded for up to a year before engine testing can resume elsewhere. This will cause serious harm to Boeing, its customers, and national interests.

Absent a timely stay, Boeing faces substantial, irreparable harm. Conversely, a limited stay will not result in any discernable harm to other interested persons or the public interest. Finally, based on the substantial issues presented by Boeing's Petition for Review, a stay of relevant provisions of the 2004 Permit and 2006 Permit is warranted pending consideration of said petition by the State Board.

Accordingly, pursuant to California Water Code sections 13320-13321 and Title 23 of the California Code of Regulations, section 2053, Boeing respectfully petitions the State Water Resources Control Board ("State Board") for issuance of a stay, in whole or in part, of certain discharge limits set forth in the 2004 and 2006 Permits.[2] Specifically, Boeing seeks to stay the effect

[2] Petitioner hereby requests that the administrative records for the 2004 and 2006 Permits, including without limitation, all documents filed in connection with the Petitions for Review of the 2004 or 2006 Permits, all SMRs filed since adoption of the 2004 Permit, relevant portions of Regional Board hearing transcripts, and all correspondence concerning either the 2004 or 2006 Permits, be incorporated as part of the record in this proceeding.

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

of: (1) new numeric effluent limits added to the 2004 or 2006 Permits, applicable to all storm water discharges; and (2) new numeric effluent limits added to the 2006 Permit, applicable to waste water discharges at Outfalls 012 and 018.[3] Boeing seeks such relief prior to March 9, 2006, or alternatively, at the earliest feasible date.

II. FACTUAL BACKGROUND

A. Description of SSFL

SSFL is located in the Simi Hills area of Canoga Park, in Ventura County, California. The facility consists of approximately 2800 acres, of which roughly 2300 acres is undeveloped land of mostly mountainous terrain. Ownership of the facility is shared by Boeing and the NASA. The operational history of the facility is generally described in the 2006 Permit.[4]

Boeing presently engages in very limited and infrequent industrial activities at SSFL that result in discharges to surface water. Those activities are primarily focused on completion of scheduled rocket engine testing on behalf of Boeing's government customers. During such tests, substantial amounts (approximately 50,000 gallons) of "quench" water are used to cool flame deflectors. With the exception of runoff from occasional rocket engine testing, surface water discharges from SSFL are generally associated with storm events.

Depending on flow conditions, surface water can exit SSFL via several discharge points around the facility, referred to as "outfalls." Most of these discharge points are located in undeveloped areas of the facility. Outfalls 001 and 002 are located on the southern portion of the facility and discharge to Bell Creek, a tributary to the Los Angeles River. Surface water runoff from various regulated interior outfalls, such as Outfalls 011 (Perimeter Pond) and 018 (R2 Pond) remains on-site until passing through Outfalls 001 and 002.

//

[3] As explained in Section III.A.3., *infra*, relief from numeric limits at Outfalls 012 and 018 is necessary so that the limited "hot fire" tests in support of the Delta Rocket Engine Program can proceed as needed to complete engine repairs for critical mission flights.

[4] 2006 Permit, ¶¶ 4-27.

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

Discharges from Outfalls 003-010 are comprised solely of storm water and discharge toward the Arroyo Simi, a tributary of Calleguas Creek. Outfalls 012 through 014 monitor discharges from the rocket test stands, although only Outfall 012 is currently used to discharge the process water. Monitoring is required when rocket testing takes place. Remaining Outfalls 015 through 017 are for the sewage treatment plants, which are not in operation.

According to the Regional Board, SSFL has the potential, based on a 24-hour duration, 10 year return storm event, to discharge a total of approximately 272 million gallons per day of storm water runoff.[5]

B. Summary of NPDES Permit Regulation of SSFL

1. 1998 Permit

Boeing has been subject to site-specific NPDES permit requirements for storm water discharges at the SSFL facility since 1998. The 1998 Permit imposed numeric discharge limits on seven outfalls, monitoring requirements on several others, and required monitoring during every storm event. To comply with its permit obligations, Boeing has engaged in an ongoing process of installing, maintaining, upgrading and replacing Best Management Practices ("BMPs") at each of the facility's regulated outfalls. Through this iterative process, Boeing's BMPs have generally been effective. For example, under Boeing's 1998 Permit, despite very low numeric limits, violations steadily declined between 1998 through the 2003-2004 wet season (the last one before issuance of the 2004 Permit), when only four exceedances of permit limits occurred. In total, between 1998 and June 2004, Boeing achieved a 99.5% compliance rate.[6]

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

---

[5] *Id.*, ¶ 13.

[6] *See* January 19, 2006 Regional Board Hearing testimony of Sharon Rubalcava ("Rubalcava Testimony"), p. 51:8-23. The number of compliance data points is calculated by multiplying the number of rainfall events during the relevant permit period by the number of compliance constituents. Out of 5484 compliance data points collected during this time frame, Petitioner had 26 permit exceedances. Under more stringent requirements of the 2004 Permit, Boeing has maintained a 98% compliance rate. January 19, 2006 Regional Board Hearing testimony of Dr. Susan Paulsen ("Paulsen Testimony"), p. 70:7-17.

2. 2004 Permit

The 2004 Permit was amended to add numeric effluent limits for new outfalls, and numerous new constituents for existing outfalls. Notably, the Regional Board changed analytical methods for metals and dioxins (TCDD). As a result, Boeing had no baseline for predicting future compliance, since prior methods of monitoring for metals and dioxins did not provide information that could be translated under the new method. Notwithstanding Boeing's objections, new limits under the 2004 Permit were made immediately effective.[7]

These developments had direct consequences. On March 14, 2005, Boeing received a Notice of Violation ("NOV") from the Regional Board for exceedances noted in its Fourth Quarter 2004 Discharge Monitoring Report ("DMR"). As specified in the NOV, Boeing was directed to immediately implement corrective and preventative actions to come into compliance with permit conditions. Based on extensive investigation and analysis, Boeing concluded and advised the Regional Board that most of the exceedances resulted from natural causes, and were for new constituents, limits or methodologies in the renewed permit for which no compliance schedule had been provided. Boeing identified a number of these causes in an April 14, 2005 letter to the Regional Board.[8]

On July 15, 2005, Boeing submitted a written request to the Regional Board seeking a limited reopening of the 2004 Permit, with proposed interim limits and a proposal for the evaluation of site specific conditions. Boeing explained how such an approach would provide time to establish a comprehensive BMP program, and investigate the feasibility of developing site-specific water quality objectives.[9]

//

---

[7] Rubalcava Testimony, pp. 51:25-52:24.

[8] Letter to Russ Colby of Regional Board from Steve Lafflam of Boeing, dated April 14, 2005, at pp. 1-2. The Fourth Quarter DMR provided the first opportunity for Boeing to evaluate the technical feasibility of attaining compliance with the 2004 Permit's stringent water quality limits for storm water discharges. The data provided clear evidence that immediate compliance was infeasible due to amendments to the 2004 Permit.

[9] Letter to Jonathan Bishop of Regional Board from Steve Lafflam of Boeing, dated July 15, 2005.

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

The Regional Board's response, four months later, acknowledged Boeing's technical findings and compliance dilemma. In particular, Jonathan S. Bishop, Executive Officer of the Regional Board, concluded:

> "The preliminary results indicate that Boeing **will not be able to immediately comply** with effluent limits [in the 2004 permit] for several constituents. Boeing's **inability to immediately comply** with some of the effluent limits is also demonstrated by the number of violations reported in the Self-Monitoring Reports (SMRs) submitted since [Water Quality Order No. R4-2004-011 ("2004 Permit")] became effective on August 20, 2004. Hence, Boeing may be provided with interim limits for newly proposed, more stringent effluent limitations and a compliance schedule for some of the referenced constituents." *Id.*, p. 1 (emphasis added).[10]

Nevertheless, staff made it clear that Boeing's request for relief would need to be addressed at a hearing before the Regional Board, in connection with forthcoming amendments to the 2004 Permit and a draft CDO, which staff advised would include interim limits and a compliance schedule.

3. 2006 Permit

The 2006 Permit prepared by staff and adopted by the Regional Board at the January 19 hearing substantially amended the 2004 Permit. Once again, the permit establishes new numeric effluent limits for storm water discharges, and extends the application of these numeric limits to additional outfalls and constituents, as summarized below:

- Outfalls 012-014 (rocket test stands) have been changed from monitoring stations to regulated outfalls (compliance points). Nineteen constituents are now regulated at these outfalls. As explained below, this is directly relevant to the continued viability of the Delta Rocket Engine Test Program.[11]
- Interior Outfalls 011 and 018 have been changed from monitoring stations to regulated outfalls (compliance stations) and given the same numeric limits as Outfalls 001 and 002.
- Outfalls 008 (Happy Valley) and Outfalls 009 and 010, that were previously monitoring only outfalls for many constituents, have been grouped with Outfalls 003, 004, 005, 006, and 007, and subsequently assigned the same

[10] Letter to Steve Lafflam of Boeing from Jonathan Bishop of Regional Board, dated November 15, 2005, p. 1.

[11] Although Outfalls 013 and 014 have not discharged water since 2004, and are not expected to in the future, the imposition of enforceable numeric limits at Outfall 012 will result in substantial harm to Boeing, since it will be required to terminate the ongoing Delta Rocket Engine Test Program at SSFL before the effective date of the 2006 Permit.

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

regulated constituent permit levels. This grouping has added twelve more constituent permit limits to be regulated at Outfalls 008, 009, and 010.

- For Outfalls 015 and 017 (sewage treatment plants), ten more constituents have been added to the regulated permit limit constituent list.

Despite the sweeping nature of these amendments, the 2006 Permit fails to provide either interim limits or a compliance schedule. With an effective date of March 9, 2006, the new limits will take effect in the middle of the present rain season.[12]

D. Effects Of Natural Events and Conditions On Permit Compliance

Boeing acknowledges that some prior exceedances of permit limits may be associated with past or present industrial activities at SSFL. Presently, investigation and correction action activities at SSFL, which addresses air, soil, surface water and groundwater impacted from past releases, are under oversight of the California Department of Toxic Substances Control ("DTSC") in accordance with statutory cleanup requirements.[13]

While SSFL has a history of contamination, Boeing has observed the lack of any apparent patterns in permit exceedances, or magnitudes of constituent concentrations to date. In other words, based on previous cleanup activities and subsequently collected monitoring data, historic contamination at SSFL does not appear to be impacting surface water quality.[14] On the other hand, extensive data indicates that many of the exceedances are due to naturally-occurring conditions that are beyond Boeing's control.

First, in 2003, the Piru and Simi Fires burned up to the edge of SSFL and deposited huge amounts of ash prior to the effective date of the 2004 Permit. Also, during the first rain season under the 2004 Permit, Southern California received the second highest amount of rainfall in

---

[12] Rubalcava Testimony, pp. 53:17-54:3.

[13] *See* 2006 Permit, ¶ 7. Boeing has engaged in extensive cleanup activities of key contaminant source areas. For example, over 8,000 cubic yards of soil were excavated at Happy Valley, in the vicinity of Outfall 008, following perchlorate detections in surface water. Over 23,000 cubic yards of soil were removed near Outfalls 005, 006, and 010 to remediate mercury contamination. Likewise, an approximately ¾ acre area in the vicinity of Outfall 004 was tarped to mitigate against potential surface water impacts from mercury detected in soils. *See also* Paulsen Testimony, p. 71:1-11; Letter to Russ Colby of Regional Board from Steve Lafflam of Boeing, dated April 14, 2005, pp. 6-7.

[14] Rubalcava Testimony, at pp. 55:20-56:3

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

recorded history. This presented major challenges for Boeing, since excessive rainfall resulted in significant soil erosion throughout the facility.

Shortly before amendments to the 2006 Permit were proposed, conditions at SSFL changed even more dramatically. Beginning September 28, 2005, the Topanga Fire swept through the SSFL and burned approximately 70% of the site, including numerous on-site structures. The vegetative cover that normally stabilizes slope soils was largely devastated, leaving behind significant ash deposits and denuded hillsides. Boeing anticipates that this loss of vegetation will cause extraordinary soil erosion to occur during storm events until substantial revegetation can take hold. This process will take several years.[15]

The effects of the Topanga Fire at SSFL, and previous fires in the immediate vicinity of the facility, are readily apparent. For example, based on data collected in October 2005, after a relatively small precipitation event that resulted in flows in only certain outfalls at the SSFL, concentrations of total suspended solids ("TSS") were 54 times higher than pre-fire historical averages.[16]

Second, fires generate significant quantities of various constituents regulated by the 2004 and 2006 Permits. Smoke from fires increases atmospheric deposition of metals, both in the areas that burn and in adjacent areas affected by smoke and ash. Combustion releases metals from vegetation and other materials that burn, and the products of incomplete combustion include organic compounds such as dioxins (TCDD).[17] Concentrations of several other constituents regulated by the 2004 and 2006 Permits, including copper and dioxin, have also been found in storm water discharges in concentrations greater than those observed in storm flows that occurred before the Topanga Fire.[18]

---

[15] Vegetation can require approximately four years to become reestablished following a fire. Declaration of Susan Paulsen ("Paulsen Dec."), ¶ 18; *see also* Boeing Company Comments to Tentative Cease and Desist Order R4-2006-0XXX ("Boeing Comments to CDO"), at pp. 7 and 13, *citing* USDA Forest Service Gen. Tech. Rep. RMRS-GTR-42-vol. 2. 2000, p. 5, and LACDPW, 1993).

[16] Paulsen Testimony, p. 76:1-14.

[17] As documented in scientific literature by the United States Environmental Protection Agency ("EPA") and others, ash material contains elevated concentrations of various metals and products of incomplete combustion, many of which have numeric discharge limits in the 2004 and 2006 Permits. Boeing Comments to CDO, at p. 7, *citing* Gallerman and Koch, 2004; Bitner, 2001.

[18] Paulsen Dec., ¶ 17.

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

Third, storm water runoff from burned areas is known to contain higher concentrations of many of the constituents regulated in the 2004 and 2006 Permits, including metals, suspended solids, and dioxins. These effects have been observed at the SSFL site, at other burned sites in southern California, and at other fire sites outside the region.[19] More ash and runoff will increase suspended sediment loads into SSFL drainages, and loads and concentrations of the organic and metal constituents that are adsorbed to sediments. Preliminary data from SSFL already demonstrate increased constituent concentrations resulting from post-fire soil erosion, and future natural soil erosion is expected to cause substantial increases in concentrations of metals, some organic compounds and dioxins in storm water runoff.[20]

The Piru, Simi and Topanga Fires were unanticipated natural events, entirely beyond Boeing's control. Most recently, the Topanga Fire resulted in significant loss of vegetative ground cover, increased erosion and TSS, as well as deposition of ash, charred material and smoke that contain naturally-occurring constituents regulated under the 2004 and 2006 Permits. Despite substantial evidence as to how fire events have, and will, adversely impact Boeing's ability to comply with permit requirements, the Regional Board has repeatedly denied Boeing any interim relief.

E. Boeings Ongoing Efforts To Implement and Upgrade BMPs

Boeing has engaged in significant efforts to monitor storm water, and implement and improve BMPs to the maximum extent practicable. Storm water monitoring is conducted to characterize the quality of storm water runoff associated with site operations and to measure the effectiveness of BMPs in removing pollutants from storm water discharges.[21] Utilizing data from its monitoring efforts, Boeing has implemented many structural and non-structural BMPs to reduce the risk of regulated constituents from entering the storm water system.[22]

//

---

19 *Id.*, ¶ 19.

20 Boeing Comments to CDO, at p. 7.

21 Boeing Comments to 2006 Permit, at p. 7.

22 *Id.*, at p. 8.

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

Boeing currently implements structural BMPs at a number of locations, including most of the regulated outfalls.[23] Many BMPs were upgraded during the summer of 2005, prior to the 2005-2006 storm season. Most BMPs were destroyed by the Topanga Fire, but were rebuilt and upgraded as quickly as possible. BMP measures currently include hydraulic controls, erosion control measures, and filtration. As of January 19, 2006, specific mechanisms included over seven miles of straw wattles (rolls), over 430 straw bales, silt fencing throughout the facility, along with sand filters and/or activated carbon bags at several outfalls.[24] In addition to these BMPs, Boeing recently completed extensive slope stabilization and erosion control via approximately 860 acres of hydromulching.[25]

F. Delta Rocket Engine Test Program

The Delta Rocket Engine Test Program is presently underway at SSFL. The Delta II Rocket engines, designated RS-27, are "hot fire" tested in the ALFA-3 Test Stand ("Test Stand") near Outfall 012. To prevent this high velocity and extremely hot flame from reflecting off the ground and damaging the Test Stand and/or the engine, the flame is redirected horizontally away from the Test Stand, using a "flame deflector."[26]

The flame deflector utilizes an integral water coolant system to protect the Test Stand and subdue acoustic energy generated by the combustion process. Approximately 50,000 gallons of water is generated for each test. There is a water loss of approximately 4,000 gallons due to flashing from the engine exhaust, and remaining water courses through an unlined channel to two reclamation ponds.[27] During a storm event, surface water may flow from these ponds off-site via Outfall 002.

---

[23] A description and layout of all BMPs at the outfalls are documented in the Technical Report Pursuant to Section 13267 of the California Water Code dated November 16, 2005 (MWH, 2005a). A description and photographs of the BMPs at Solid Waste Management Units ("SWMUs") subject to DTSC oversight were included in Boeing's "Response to Cleanup and Abatement Order R4-2005-0077" (MWH, 2005b).

[24] Rubalcava Testimony, pp. 60:7-61:3.

[25] Paulsen Dec., ¶ 21.

[26] Declaration of Mark Zeller ("Zeller Dec."), ¶ 4.

[27] *Id.*, at ¶ 5.

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

Presently, surface water discharges from hot fire quenching are regulated at three outfalls under the 2004 Permit and 2006 Permit, respectively, as follows: (1) the 2004 Permit establishes numeric effluent limits at Outfall 002, and monitoring requirements at Outfalls 012 and 018; and (2) the 2006 Permit establishes numeric effluent limits at each of these outfalls.

III. LEGAL ARGUMENT

Under Title 23 of the California Code of Regulations, the State Board may stay the effect of an action by a regional board upon a showing by the petitioner of the following: (1) substantial harm to petitioner or to the public interest if the stay is not granted; (2) a lack of substantial harm to other interested parties and the public interest if the stay is granted; and (3) substantial questions of fact or law exist with regard to the disputed action.[28] Each of these factors is satisfied in this instance.

A. Petitioner Will Suffer Substantial Harm If A Stay Is Not Granted

The Regional Board's adoption of the 2006 Permit and rejection of the CDO constitutes a prejudicial abuse of discretion. The Board reached its decision in spite of Boeing's unrebutted evidence that immediate compliance is impossible, and staff's recommendation to provide Boeing with interim limits and a compliance schedule for the 2006 Permit. The 2006 Permit becomes effective on March 9, 2006. Because Boeing is required to achieve immediate, full compliance with numeric effluent limitations for all surface water discharges – including discharges comprised entirely of storm water – Boeing will be substantially harmed unless a stay is issued.

Monitoring data collected following the effective date of the 2004 Permit has clearly demonstrated Boeing's inability to attain immediate compliance with the permit's newly-imposed numeric limits. This situation has been greatly exacerbated by the Topanga Fire. Thus, since a stay of the 2006 Permit does not, in and of itself, adequately remedy the substantial harm Boeing will incur, Boeing requests that the stay be extended, at least in part, to the 2004 Permit.

[28] Cal. Code Regs., tit. 23 § 2053(a).

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

1. Immediate Compliance With Both 2004 Permit And 2006 Permit Requirements Is Infeasible

Prior to and at the January 19, 2006 hearing, Regional Board staff conceded that Boeing cannot immediately comply with requirements of the 2004 Permit *and* the amended 2006 Permit.[29] Nonetheless, the Regional Board declined to provide Boeing any interim relief from infeasible permit requirements.

As a result of the 2005 Topanga Fire, it is anticipated that extraordinarily large amounts of soil erosion will occur during rainfall events during at least the next 4 years until revegetation can take hold.[30] The Piru, Simi and Topanga Fires all deposited large amounts of ash at and around SSFL. Additionally, the burning of vegetation during a fire is known to release metals and organics, including dioxins, to the surrounding environment. Post-fire sampling and the amount of time it takes to evaluate, design, monitor, and upgrade BMPs further demonstrate that it is not feasible to immediately comply with numeric effluent limits.[31]

In addition, the exceedingly stringent numeric limits set forth in the 2004 and 2006 Permits, coupled with the existence of naturally-occurring "background" concentrations of various constituents, further compromises Boeing's ability to reach immediate, full compliance. Boeing has been collecting samples and characterizing naturally-occurring concentrations of numerous constituents in uncontaminated soils, ash, and surface water at SSFL. Preliminary data from these sampling efforts suggest that significant concentrations of metals and some organic compounds are likely to result from natural uncontaminated soil erosion and from ash. Enhanced erosion of these soils will result in increased concentrations and loads of key constituents in storm water runoff.[32]

Boeing has been rapidly implementing BMPs, to the maximum extent practicable, as well as other measures to mitigate soil erosion, including hydromulching to stabilize fire-denuded soils.[33] However, installing BMPs, monitoring their effectiveness, and upgrading or replacing the

---

29 "Boeing will not be able to immediately comply with effluent limits. . . ." Letter to Steve Lafflam of Boeing from Jonathan Bishop of Regional Board, dated November 15, 2005, p. 1.

30 Boeing Comments to 2006 Permit, p. 9.

31 *Id.*, at pp. 9-11.

32 *Id.*

33 Other soil stabilization measures are also being implemented. These activities have been

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

BMPs is a multi-year program. Large structural BMPs would require extensive advance planning and permit approval before construction could commence.[34]

In summary, Boeing has presented voluminous data from SSFL that unequivocally demonstrates the infeasibility of immediate compliance with certain requirements of both the 2004 Permit and the 2006 Permit. Boeing has previously demonstrated its inability to achieve full compliance with numeric effluent limits in the 2004 Permit. The 2006 Permit adds numerous new compliance requirements, without providing Boeing any time to develop measures to meet these standards.[35] Boeing is unaware of any precedent demonstrating the ability of BMPs to achieve the extremely low numeric limits, under all types of storm events, as prescribed by the 2006 Permit.[36]

2. Boeing Will Immediately Be Subject To Civil And Administrative Enforcement

Boeing faces immediate harm if a stay is not granted, because it will be subject to substantial fines and penalties through civil and/or administrative enforcement. First, pursuant to the citizen suit provisions of the Clean Water Act, Boeing is potentially subject to the imposition of civil penalties of $32,500 per day, per violation, for any violations of its NPDES permit.[37] Second, pursuant to Water Code section 13385, Boeing may be subject to administrative civil liability, or civil liability imposed by a superior court, in amounts ranging from $3,000 to $25,000 for each violation and for each day in which a violation occurs.[38]

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

---

more thoroughly described in a report submitted to the Regional Board on December 30, 2005, in response to Cleanup and Abatement Order R4-2005-0077.

[34] Boeing Comments to 2006 Permit, p. 10. Planning, permitting, and installing further structural upgrades could take several months to years, depending on the scale of the upgrade and any permit requirements or environmental review, such as under the California Environmental Quality Act ("CEQA"). This schedule is described in detail in a work plan dated December 16, 2005, submitted to the Regional Board in response to a 13267 directive dated November 22, 2005 (MWH, 2005a).

[35] Paulsen Dec., ¶ 5.

[36] *Id.*, at ¶ 5.

[37] 33 U.S.C. §§ 1319(d), 1365(a); 40 C.F.R. §§ 19.1-19.4.

[38] Wat. Code §§ 13385(a)-(h)(1).

These are not hypothetical or speculative concerns.[39] On December 14, 2005, Committee to Bridge the Gap, Southern California Federation of Scientists, and Physicians for Social Responsibility (collectively, "Plaintiffs"), notified Boeing of their intent to file a civil complaint in Federal District Court, seeking relief for violations of the Clean Water Act, related to discharges from SSFL. As set forth in their notice letter, Plaintiff's complaint – which can be filed in federal court as soon as February 17, 2006 – will allege that Boeing has violated and continues to violate water quality standards, limitations, and orders in violation of the Clean Water Act by causing and permitting the discharge of industrial waste water and storm water at SSFL, "in violation of the effluent and receiving water limitations and other requirements contained in NPDES Permit No. CA0001309" (the 2004 Permit, as amended by the 2006 Permit).[40]

Meanwhile, Boeing remains subject to ongoing administrative and/or civil enforcement by the Regional Board or the Attorney General's office for each permit violation. At the January 19, 2006 hearing, the Regional Board expressed its strong desire for staff to more vigorously enforce permit violations.

Since the 2006 Permit requires strict and immediate compliance, "it is certain that Boeing will be in violation of [the 2006 Permit] shortly after it becomes effective."[41] This conclusion is based upon: (1) the very stringent nature of newly imposed numeric values numeric values for storm water discharges that are below measured concentrations in the receiving waters; (2) the fact that there is no proven technology or method to achieve such exceedingly low levels for storm water discharges; and (3) the dramatic change in site conditions at SSFL following the Topanga Fire in September 2005.[42]

//

---

[39] *Cf. In the Matter of the Petitions of County of Los Angeles and Los Angeles County Flood Control District, et al.*, WQO 2002-0007, wherein the State Board ruled that because the municipal storm water permit did not require "strict compliance" with water quality standards, but instead, allowed for an "iterative" approach towards compliance, the possibility of enforcement actions was "highly speculative." *Id.*, at 4-5. The 2006 Permit, by contrast, does require strict compliance.

[40] See "Notice of Citizen Suit Under Section 505 of the Clean Water Act (33 U.S.C. §1365) – Santa Susana Field Laboratory," dated December 14, 2005, from John H. Farrow to Steve Lafflam.

[41] Paulsen Dec., ¶ 6 (emphasis added).

[42] *Id.*, at ¶ 6.

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

In short, while the Regional Board's decisions serve no immediate purpose in improving water quality, either at SSFL or the Los Angeles Basin, they virtually ensure that Boeing will be subject to immediate, repeated, and costly, enforcement actions for violating permit conditions that are impossible to comply with.

3. Without A Stay, The Delta Rocket Engine Test Program Will Be Terminated On March 9, 2006, Resulting In Substantial Harm To Boeing, Its Customers, And The Public Interest

The State Board has recognized that "incur[ing] additional costs to comply with the tasks if a stay is not issued" constitutes a substantial harm to petitioner.[43] Compliance with the requirements set forth in the 2006 Permit will cause substantial economic harm to Boeing, and adversely impact matters both its government customers and the public interest.

a) There Is No Readily Available Alternative Site For Completion Of The Delta Rocket Engine Test Program

As described above, the Delta Rocket Engine program is grounded pending completion of additional tests now underway at SSFL. Boeing needs to conduct at least four hot fire tests to develop and validate corrective actions necessary to repair the engines and clear them for flight.[44] Boeing is attempting to conduct two of these tests before March 9, 2006. Depending largely upon the outcome of the data collected during these tests, it may be necessary to perform additional tests beyond that date.

Boeing must cease engine testing on March 9, 2006 (the effective date of the 2006 Permit) in order to prevent surface water discharges from the Alfa Test Stand (Outfall 012) that could result in permit violations. If Boeing is unable to conduct these additional tests, the Delta Rockets could remain grounded for up to a year before engine testing can resume elsewhere.[45] In that event, Boeing's government customers will be adversely affected. These customers include

---

[43] *In the Matter of the Petition of Fairchild Semiconductor Corp. and Schlumberger Technology Corp.*, Order No. WQ 89-5.

[44] Zeller Dec., ¶ 3.

[45] Zeller Dec., ¶ 3.

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

NASA, the USAF, and the NRO.[46]

In order for the necessary tests to be completed, Boeing seeks relief from the new discharge limits for Outfalls 012 and 018 in the 2006 Permit. This relief is needed in order to accomplish the hot fire tests necessary to deliver the current inventory of Delta II Rocket engine systems ready for flight, and to ensure that Boeing's government customers can proceed with timely launch schedules.[47]

Given the urgency of the Department of Defense's current missions and needs, unless immediate relief is granted, then Boeing, its customers and military personnel would suffer substantial harm. Without a stay, the testing program will have to be put on hold while a test stand is constructed at a different location. This process could take a year or longer.[48] Because SSFL is currently the only location, anywhere in the world, where these tests can occur, the inability to conduct hot fire tests at SSFL creates the risk that none of the Delta II Rocket engine systems can be used. Boeing would be unable to provide its customers with equipment necessary for global positioning, communications, reconnaissance, and scientific missions in support of national interests. Launch deadlines would slip significantly.[49]

Given the limited number of tests that Boeing is requesting, the limited number of outfalls for which relief is being requested, and the critical need of Boeing's customers for engines, there is ample justification to stay the new numeric limits for Outfalls 012 and 018 listed in the 2006 Permit, and the numeric limits for storm water discharges at Outfall 002 listed in the 2004 and 2006 Permits.[50]

---

[46] *Id.*, at ¶ 3. Letters of Importance from the USAF and NRO were submitted at the January 19, 2006 meeting of the Regional Board in support of Boeing's request for the CDO. Hearing Transcript, pp. 126:14-131:3.

[47] Zeller Dec., ¶ 6.

[48] *Id.*, at ¶ 7. At completion of any modification effort at an alternate site, a series of tests to validate and certify the new facility would also be required. The total cost associated with the activation effort is estimated at upwards of $15,000,000. *Id.*, at ¶ 7.

[49] *Id.*, at ¶ 6.

[50] *Id.*, at ¶ 12.

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

b) New Limits In The 2006 Permit Will Substantially Hinder Boeing's Efforts To Complete The Delta Rocket Engine Test Program

The 2006 Permit creates substantial compliance challenges for Boeing by imposing, for the first time, effluent discharge limitations for Outfall 012. Under the 2004 Permit, with the exception of temperature and pH, Boeing was only required to collect monitoring data at Outfall 012. Based on historical monitoring data, if additional hot fire testing was required to occur after March 9, 2006, subject to 2006 Permit requirements (and prior to installation of surface discharge control measures), there is a substantial likelihood that effluent discharge exceedances will occur for 10 of the 23 analytes with new discharge limitations.[51] Indeed, monitoring results from Outfall 012 indicate that if the 2006 Permit limits had been effective last year, Boeing would have been in violation of permit limits in connection with engine fire testing. This suggests a strong likelihood – if not probability – of violations for future engine fire testing at this location if the new 2006 permit limits are imposed.[52]

Thus, at a minimum, the imposition of new discharge limitations established in the 2006 Permit will pose substantial compliance challenges for Boeing. It is much more likely that continued engine fire tests under the 2006 Permit would result in multiple exceedances of permit limits.[53]

In conclusion, unless a stay is issued, Boeing will be subject to substantial harm in the event that additional engine testing is necessary after March 9, 2006; Boeing and national security interests will be irreparably harmed if additional engine tests are required to proceed at an alternative facility.

---

[51] These include the following analytes: Total Petroleum Hydrocarbons (as TRPH, EFH and GRO); lead; mercury; naphthalene; pH; TCDD; temperature; total suspended solids. Declaration of Richard Haimann ("Haimann Dec."), at ¶ 2.

[52] *Id.*, at ¶ 3.

[53] *Id.*, at ¶ 5. Boeing's ongoing goal is to achieve full compliance with its NPDES permit obligations. In furtherance of this objective, Boeing intends to install control measures to adequately contain and treat surface water effluent discharge at the Alfa Test Stand associated with Outfall 012. However, this process will also require time for design, permitting, procurement and construction. Additionally, Boeing cannot determine in advance whether such countermeasures will be effective in achieving full permit compliance.

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

B. Granting A Stay Will Not Harm Other Interested Parties Or The Public Interest

In circumstances where there will be harm to one party in the absence of a stay and no harm to the other if a stay is issued, the balancing of the equities tips heavily in favor of the party that will be harmed by the lack of a stay. *See, e.g., Robbins v. Superior Court*, 38 Cal.3d 199, 205 (1985). Here, neither the public nor other interested parties will suffer any substantial harm if the stay is granted. Thus, the balancing of equities weighs strongly in favor of Boeing.

Boeing's efforts to comply with its permit obligations are ongoing and continuous. To address storm water discharges, following the Topanga Fire, Boeing replaced and upgraded BMPs throughout the facility. However, it is not possible to construct the types of control measures, such as dams and containment basins, which would be required to completely control discharges from the site. Even if such measures were possible, Boeing alleges that such measures would not be reasonable for storm water discharges. Rather, reasonable steps are already being taken to achieve compliance with 2004 and 2006 Permit requirements at SSFL.

In the event a stay is granted, there would be no substantial or discernable change in receiving water quality from any SSFL surface water discharges. This is because the water quality of discharges from SSFL is not significantly different than storm water discharges from other land use types and facilities within the Los Angeles Region.[54] For example, average concentrations of total copper, lead, and zinc in storm water samples collected from the SSFL before the 2005 Topanga Fire are lower than average concentrations in storm water samples collected from several land use types within the Los Angeles Region, and are significantly lower than average concentrations in the Los Angeles River following storm events.[55] By way of further example, dioxin concentrations in storm water runoff are highly variable. Average dioxin concentrations in storm water runoff from the SSFL site are lower than both average dioxin concentrations in wet weather samples collected in the Santa Monica Basin, and average dioxin concentrations in

---

[54] Paulsen Dec., at ¶ 7. For example, the Los Angeles County Department of Public Works prepared a summary of measured metals concentrations collected. These data characterize runoff water quality from various land use types and within the region's receiving waters during storm flow conditions. *Id.*, Exhibit "A".

[55] Paulsen Dec., at ¶ 7.

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

industrial process water discharges, storm water discharges, and Los Angeles River receiving water samples reported to the Los Angeles Regional Board pursuant to a 13267 data request.[56]

Further, the area of SSFL is approximately 2800 acres, while the overall area of the Los Angeles River watershed is approximately 534,000 acres (or 834 square miles). Thus, runoff from the SSFL represents a *de minimis* fraction – approximately 0.6% or less – of water that flows in the Los Angeles River. Moreover, the SSFL is approximately 2.8% of the hydrologic area that drains to "Reach 6," the uppermost hydrologic unit identified in the Water Quality Control Plan ("Basin Plan") for the Los Angeles River. Thus, even if storm water discharges from the SSFL could be eliminated entirely, there would be no demonstrable water quality effect.[57]

Finally, in the event of a stay, there would be no difference in the manner by which surface water discharges are managed at SSFL. Boeing will continue best efforts to follow its iterative BMP process. Indeed, there presently is no feasible alternative to a BMP-based approach, nor any proven technology or method to achieve the exceedingly low numeric limits prescribed by the 2004 and 2006 Permits for every storm event.[58]

C. Boeing's Petition For Review Raises Substantial Questions of Fact and Law

1. The State Implementation Plan Does Not Apply To Storm Water Discharges

In 2000, the State Board drafted the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California ("State Implementation Policy" or "SIP"), with the purpose of implementing CTR criteria in individual permits. The SIP sets forth the procedure for adopting numeric water quality-based effluent limitations ("WQBELs") for NPDES permits, including conducting reasonable potential analysis and calculating numeric limitations.

---

[56] *Id.*

[57] *See In the Matter of the Review of Waste Discharge Requirements for the Avon Refinery*, WQO 2001-06, at 21-25 (finding that where no discernable effects to water quality could be established in receiving water bodies, regional board should include appropriate compliance schedules if discharger unable to comply with effluent limitations). It is presently impossible to capture and store all storm water so as to prevent any discharges from the site. Paulsen Dec., ¶ 9.

[58] Paulsen Dec., ¶ 6.

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

The State Implementation Policy expressly states that the SIP "does not apply to the regulation of storm water discharges" (emphasis added).[59] The explanation for non-applicability of the SIP to storm water permits specifically refers to: (1) the precedential decisions the State Board adopted regarding municipal storm water discharges; and (2) the statewide storm water permits for industrial and construction activities. Thus, as the California Attorney General's Office recently argued to the California Court of Appeal on behalf of the State Board, "the State Implementation Plan clearly establishes that numeric effluent limitations . . . are not required for any storm water permits in California, including industrial permits."[60]

Despite this clear statement of policy by the State Board, the technical analysis conducted by the Regional Board in establishing the numeric limits in both the 2004 and 2006 Permits included a determination that discharges from SSFL have "reasonable potential" to cause or contribute to an exceedance of water quality standards. In doing so, the Regional Board used the reasonable potential analysis procedures outlined in the SIP and EPA's Technical Support Document for Water Quality-based Toxics Control ("TSD").[61] The reasonable potential procedures outlined in these documents are appropriate for steady-state discharges, but are not applicable to storm flows. In fact, there are no reasonable potential analysis procedures for storm water discharges.[62] The Regional Board further used the methods provided in the SIP and the TSD to calculate the numeric limits included in the 2004 and 2006 Permits. Once again, these procedures are not appropriate for storm water flows.[63] Finally, the Regional Board calculated the numeric limits in the 2004 and 2006

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

---

[59] State Implementation Policy, fn. 1 (emphasis added); *See also California Toxics Rule Response to Comments Report, Volume II*, December 1999 (prepared by USEPA Office of Science and Technology and USEPA Region 9), Response to Comments CTR-001-007, p. 1248 and Response to Comment CTR-040-014b, at p. 1284.

[60] *Environmental Conservation Organization v. California State Water Resources Board* (pending before California Court of Appeal, Fourth Appellate District), Respondent's Brief, p. 21.

[61] *See* Fact Sheet for NPDES Permit NO. CA0001309, pp. 26-36.

[62] Paulsen Dec., ¶ 11.

[63] *Id.*, at ¶ 12. To establish numeric limits for storm water discharges, a dynamic modeling approach would be required, as outlined in EPA's TSD. The Regional Board has not undertaken a dynamic modeling analysis to establish the numeric limits for storm water discharges from the SSFL. Without a dynamic modeling analysis, there is no accepted methodology for developing numeric limits for storm water discharges. *Id.*, at ¶ 12.

Permits using a limited subset of available data. Significantly, the Regional Board did not adequately consider background water quality data or the substantial effects on storm water quality of the 2005 Topanga fires, described above.[64]

b) Federal and State Regulations Exempt Storm Water Discharges Associated With Industrial Activities From Numeric Effluent Limitations

Both the 2004 and 2006 Permits establish numeric limits for storm water discharges from SSFL, when an iterative BMP approach is typically applied to storm water discharges from industrial facilities.[65] Federal regulations expressly authorize the use of a BMP-based approach for water quality based effluent limitations in storm water permits.[66] USEPA has interpreted 40 Code of Federal Regulations section 122.44(k) as creating an exemption for storm water discharges associated with industrial activities. EPA has further reiterated that permits regulating storm water discharges associated with industrial activities may utilize BMP requirements and provisions prohibiting exceedances of water quality standards, rather than requiring numeric effluent limitations.[67]

As noted above, the SIP incorporates this federal interpretation by specifying that storm water discharges are not subject to the procedures applicable to other NPDES requirements implementing the CTR. The SIP has been approved by EPA. Therefore, in adopting the 2004 and 2006 Permits, the Regional Board has opted to ignore the State Implementation Plan, as well as federal law in noting that the implementing policy for numeric WQBELs derived from the CTR is not applicable to storm water discharges.

---

64 *Id.*, at ¶ 12.

65 *Id.*, at ¶ 10.

66 *See* 40 C.F.R. § 122.44(k); California Statewide Permit for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities, State Water Resources Control Board Water Quality Order No. 97-03-DWQ, NPDES Permit No. CAS000001.

67 *See, e.g.*, USEPA Interim Permitting Strategy Approach for Water Quality-Based Effluent Limitations in Storm Water Permits ("USEPA Interim Permitting Strategy"), 61 Fed. Reg. 43761 (8/26/96); and USEPA Questions and Answers, 61 Fed. Reg. 57425.

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

c) Whether Or Not Numeric Effluent Limits Can Or Should Be Applied To Storm Water Discharges Is A Matter Of Statewide Significance

This matter presents an important policy question that extends beyond the SSFL site and is subject of current statewide debate. The State Board has convened a "blue ribbon" panel of recognized experts to address whether or not it is feasible to develop numeric limits for storm water permits. This panel heard presentations from regulators, the regulated community, and the environmental community on September 14, 2005, and is currently developing a written assessment of various questions related to the feasibility of developing numeric limits for storm water permits. This information would presumably be used by the State Board and by the Regional Boards in determining if, and under which circumstances, numeric limits should be applied to storm water discharges.[68]

Similarly, the Regional Board has convened a "Wet Weather Task Force" to "identify and prioritize project ideas of interest to the task force that could help address the challenges involved in complying with water quality standards and TMDLs during wet weather."[69] Among the potential projects identified by this task force are projects to evaluate: (1) BMP effectiveness (including reviewing existing protocols and making recommendations for measuring/determining BMP effectiveness and developing certainty regarding BMP performance/limitations for different types of pollutants and storm conditions); (2) natural sources loading (including assessing concentrations and loadings from remote areas, including to determine the influence of atmospheric deposition); (3) atmospheric deposition reductions (by quantifying the loading reductions that can be achieved through atmospheric source reductions, including developing a plan to pursue feasible reductions in partnership with the AQMD, legislature, automotive industry, etc.); and (4) beneficial use designations within the Los Angeles Region. This list of projects indicates considerable uncertainty in the ability and measures that would be used by dischargers to address constituent concentrations for wet weather discharges.[70]

---

68 Paulsen Dec., ¶ 13.

69 *Id.*, at ¶ 16.

70 *Id.*, at ¶ 16.

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

Finally, another important consideration is that the 2004 and 2006 Permits require compliance with the numeric limits under all rainfall and flow conditions. The permits fail to specify a "design storm" or other design criteria that can be used to size and engineer BMPs or treatment systems at SSFL. The Los Angeles Regional Board has convened "Design Storm Task Force" with the following objectives: (1) to understand how various storm characteristics (size, duration, intensity) affect storm water runoff flows and resulting water quality; (2) to outline the consequences of managing for different design storms in terms of water quality, technological feasibility and cost; and (3) to investigate storm water runoff management strategies to determine their potential effectiveness in achieving water quality targets during the design storm, their technological feasibility and cost.[71]

In light of these ongoing developments at the policy-making level, the Regional Board's unilateral decision to implement numeric limits to storm water discharges at SSFL is, at best, premature. The Regional Board's decision should not be upheld until the State Board can give due and proper consideration to these issues.

//

//

//

//

//

//

//

//

//

//

//

[71] *Id.*, at ¶ 15.

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

IV. CONCLUSION

For all of the foregoing reasons, Boeing respectfully requests that, prior to March 9, 2006, or the earliest feasible date, the State Board issue a stay of: (1) new numeric effluent limits added to the 2004 or 2006 Permits, applicable to all storm water discharges; and (2) new numeric effluent limits added to the 2006 Permit, applicable to waste water discharges at Outfalls 012 and 018.

DATED: February 15, 2006

SHARON F. RUBALCAVA
PETER A. NYQUIST
ERIN L. CURRAN
WESTON, BENSHOOF, ROCHEFORT, RUBALCAVA & MACCUISH LLP

Peter A. Nyquist
Attorneys for Petitioner
THE BOEING COMPANY

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071